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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/221,489 12/28/98 WHITE

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HAROLD V. STOTLAND
SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
55 EAST MONROE STREET
42ND FLOOR
CHICAGO IL 60603-5803

EXAMINER

ELOSHWAY, C

ART UNIT

PAPER NUMBER

3751

DATE MAILED:

05/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/221,489

Applicant(s)
White et al.

Examiner
Charles Eloshway

Group Art Unit
3751



☒ Responsive to communication(s) filed on Mar 20, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-17 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Craigmile.

Craigmile teaches a “housing” (14) having an “open top” (formed by element 30), a “scrubbing medium” (12), a “valve” (39), a “cap” (40) that “clos[es] the open top” and “form[s] a top wall of the housing” (see fig. 3), and a “seal member” (42) as per claim 1. The “seal member” is considered to “cover” the “cap.” The features recited in claims 2 and 6-8 are clearly taught by Craigmile.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craigmile.

Regarding claims 3 and 5, Craigmile teaches that the device is more or less rectangular in shape rather than “substantially cylindrical” as claimed. Absent some showing to the contrary, simply changing the shape of the Craigmile device from rectangular to something more “cylindrical” would have been obvious to the ordinary artisan, for the purpose of improving the aesthetic appearance of the device, improving usability, etc. See In re Dailey, 149 U.S.P.Q. 47, 50 (C.C.P.A. 1966).

With respect to claims 4 and 9, Craigmile suggests to one skilled in the art that at least some parts of the reservoir may be made of plastic. Craigmile, col. 2, lines 19 and 20. Given this suggestion and the general knowledge in the art that plastic is a commonly used construction material, it would have been obvious to the ordinary artisan to fabricate the Craigmile “housing” from plastic in order to simplify its construction, reduce its weight, and lower its manufacturing cost. It would have further been obvious to use a transparent or semi-opaque plastic so that the user can see the level of fluid in the housing and add more as needed.

5. Claims 1-9 are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Craigmile in view of LaPland.

Interpreting claim 1 to require that the “seal” extends over the entire outer surface of the “cap,” attention is directed to LaPland who teaches another dispensing brush including a flexible

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“seal” (21) which completely surrounds the opening in the housing and extends over the upstanding walls thereof to engage the housing. In view of LaPland, it would have been obvious to the ordinary artisan to replace the Craigmile “seal” with one that wraps over the “cap” and down the walls thereof to engage the “housing” in order to provide an improved seal and to increase its useful life by replacing the depending, cantilevered construction of Craigmile with a more stable, less-easily-detachable connection.

Claims 2-9 are rejected for the same reasons enumerated in paragraphs 2 and 4.

6. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craigmile in view of Olson.

Craigmile teaches each limitation of claim 10 (including the “seal” “covering” the “cap” for the reasons given in paragraph 2), except the “actuator member.” Olson teaches another dispensing brush including an “actuator member” (29) received on the end of the valve stem. In view of Olson, it would have been obvious to the ordinary artisan to adapt the Craigmile device to have an “actuator member,” in order to make depressing the valve stem more comfortable by providing a larger contact surface area.

Regarding claims 11 and 12, the Olson “member” has the claimed shape and includes a “socket.” See fig. 3.

The features of claims 13 and 14 are clearly taught by Craigmile.

7. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craigmile in view of Olson as applied to claims 13 and 14 above, and further in view of Tourot.

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Craigmile lacks the claimed “O-ring” and the claimed location of the “spring.” Tourot teaches an “O-ring” (15) and also teaches that the biasing spring may be located interiorly of the reservoir, between the “base wall” (13) and “valve stem” (16). In view of Tourot, it would have been obvious to the ordinary artisan to provide the Craigmile device with an “O-ring” or similar sealing structure in order to improve the seal between the end of the valve stem and the aperture in the reservoir. It would have further been obvious in view of Tourot to adapt the Craigmile device to have the “spring” located interiorly of the reservoir, because the two arrangements have been shown to be functionally equivalent in the same art for the same purpose.

8. Claims 10-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craigmile in view of Olson and LaPland.

Interpreting claim 10 as requiring that the “seal” extends over the entire outer surface of the “cap,” attention is directed to LaPland who teaches a “seal” (21) which completely surrounds the opening in the housing and extends over the upstanding walls thereof to engage the housing, as explained in paragraph 5 above. For the reasons advanced in paragraph 5, it would have been obvious to the ordinary artisan to modify the Craigmile device to have the claimed “seal” construction. Other features in claim 10 are met by Craigmile alone or in view of Olson, as explained in paragraph 6.

The features recited in claims 11-14 are met by Craigmile alone or in view of Olson, as explained in paragraph 6.

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Regarding claim 17, both LaPland and Craigmile teach that the “seal” has a “gasket portion,” i.e., the outermost portion, that engages either the housing or the cap, respectively. When Craigmile is modified to have the “seal” construction suggested by LaPland (as described in the rejections above), the “gasket portion” would be located between the “cap” and “housing” as claimed.

9. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craigmile in view of LaPland and Olson as applied to claims 13 and 14 above, and further in view of Tourot.

Claims 15 and 16 are rejected on these grounds for the same reasons enumerated in paragraph 7 above.

Response to Arguments

10. Applicant's arguments filed 20 March 2000 have been fully considered but they are not persuasive.

Applicant contends that Craigmile fails to teach a “cap” for closing the open top of the housing and forming a top wall of the housing. Remarks, pg. 4. Applicant admits, however, that the Craigmile housing has a “small central aperture” in the top that is “closed” by a “cap,” incorrectly identified as (30). The “cap” is identified by numeral (40). Applicant's admission establishes that Craigmile teaches a “housing” having an “open top,” i.e., the aperture, that is closed by a “cap.” The only remaining issue is whether the “cap” forms a “top wall.” It is

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Examiner's position that it does, given the lack of any claimed definition of the "top wall." The Craigmile "cap" (40) connects to the "housing" over the "open top" (at 30) and thus forms an upstanding "top wall" that performs the claimed function.

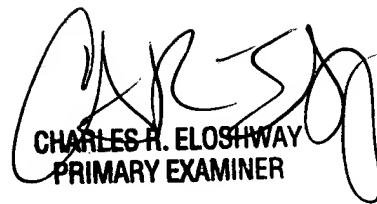
Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Eloshway whose telephone number is (703) 308-0104.

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CHARLES R. ELOSHWAY
PRIMARY EXAMINER

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May 30, 2000